

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

William Vázquez,	)	
	)	
Plaintiff	)	Case No. 07 CV 6679
	)	
v.	)	Honorable Ruben Castillo
	)	
Village of Bensenville,	)	Magistrate Judge Arlander Keys
County of DuPage,	)	
Defendants.	)	
	)	

**DEFENDANT, COUNTY OF DUPAGE'S, MOTION TO SET ASIDE DEFAULT**

NOW COMES the COUNTY OF DUPAGE, named as a Defendant in this matter, by and through its attorney, JOSEPH E. BIRKETT, DuPage County State's Attorney, and his Assistants Thomas F. Downing and Paul F. Bruckner, and pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, respectfully moves this Court for relief from the order of default entered against it on January 29, 2008, and in support thereof states as follows:

**INTRODUCTION**

1. On or about December 20, 2007, Plaintiff filed a six count lawsuit in the United States District Court, Northern District of Illinois, purporting to allege malicious prosecution and violations of his civil rights by the Village of Bensenville and the COUNTY OF DUPAGE. Counts II, IV, V and VI request relief against Defendant, COUNTY OF DUPAGE.
2. On January 24, 2008, at approximately 3:30 pm, the Defendant, the COUNTY OF DUPAGE, was served with summons and complaint in the above referenced matter. See the U.S. Department of Justice, United States Marshall Service Process Receipt and Return [Document 16], a copy of which is attached hereto as Exhibit "A".
3. Pursuant to Federal Rule of Civil Procedure 12(a)(1)(A)(i), after being served with a summons and complaint, a Defendant has twenty (20) days within which to serve an answer.

4. Defendant, the COUNTY OF DUPAGE, was served with summons and complaint on January 24, 2008, accordingly, pursuant to FRCP 12(a)(1)(A)(i), Defendant, the COUNTY OF DUPAGE has until February 13, 2008, within which to serve its answer. See U.S. District Court, Northern District - Docket Report, Docket Entry Number 16, dated January 28, 2008, which states:

“16 SUMMONS Returned Executed by U.S. Marshalls Service as to County of DuPage on 1/24/2008, answer due 2/13/2008. (rp, ) (Entered: 02/01/2008)”

A copy of the Civil Docket for Case #: 1:07-cv-06679 is attached hereto as Exhibit “B”.

5. Despite the fact that the COUNTY OF DUPAGE’s answer was not due until February 13, 2008, on January 29, 2008, less than five (5) days after the COUNTY OF DUPAGE had been served, Plaintiff made an oral motion for default. On January 29, 2008, Plaintiff’s oral motion for default was granted. Default was entered against the COUNTY OF DUPAGE despite the fact that the COUNTY OF DUPAGE still had fifteen (15) days within which to timely appear, answer or otherwise plead.

6. Despite the fact that the COUNTY OF DUPAGE’s answer was not due until February 13, 2008, on January 30, 2008, Plaintiff filed an apparent motion entitled “SUM CERTAIN” deposing and stating, on oath:

“1.0 No answer has been received by the Plaintiff with-in(sic) the time fixed by the Federal Rule of Civil Procedures, Rule 12(a).”

Contrary to Plaintiff’s statement, the time within which the Defendant, the COUNTY OF DUPAGE was required to answer had not yet expired, and would not expire for another thirteen (13) days. A copy of Plaintiff’s “Sum Certain” [Document 17] is attached hereto as Exhibit “C”.

7. Plaintiff will not be unduly prejudiced by the Court granting relief from its order of default, and it would be in the interests of justice for the Court to grant such relief and allow the

COUNTY OF DUPAGE the amount of time within which to answer specified by the Federal Rules of Civil Procedure.

8. The COUNTY OF DUPAGE possesses meritorious defenses to Plaintiff's Complaint and would be severely prejudiced if it was prevented from raising said defenses.

WHEREFORE, the Defendant, the COUNTY OF DUPAGE, prays that this Honorable Court enter an order setting aside and vacating the order of default entered against the COUNTY OF DUPAGE on January 29, 2008, and denying Plaintiff's motion for "Sum Certain", and for any other relief this Honorable Court deems just and equitable.

Respectfully submitted,

By: s/ Paul F. Bruckner  
Assistant State's Attorney

JOSEPH E. BIRKETT  
DuPage County State's Attorney  
By: Paul F. Bruckner  
Assistant State's Attorney  
Attorney No. 6206660  
503 N. County Farm Road  
Wheaton, Illinois 60187  
630/407-8200

CERTIFICATE OF SERVICE

TO: Mr. William Vázquez  
100 North Mason Street, #302  
Bensenville, IL 60106

Phillip A. Luetkehans  
Brian J. Armstrong  
Robert William Funk, II  
SCHIROTT & LUETKEHANS, P.C.  
105 East Irving Park Road  
Itasca, IL 60143

The undersigned being first duly sworn upon oath states that:

On the 13<sup>th</sup> day of February, 2008, I served a copy of DEFENDANT, COUNTY OF DUPAGE'S, MOTION TO SET ASIDE DEFAULT, according to Fed.R.Civ.P. 5(a), by e-filing a copy to Phillip Luetkehans, Brian J. Armstrong and Robert W. Funk, III, and mailing a copy to William Vázquez and depositing the same in the U.S. Mail in Wheaton, Illinois with the proper postage prepaid.

s/ Paul F. Bruckner  
Assistant State's Attorney

Case 1:07-cv-06679 Document 16 Filed 01/28/2008 Page 1 of 1

U.S. Department of Justice  
United States Marshals Service**PROCESS RECEIPT AND RETURN**

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF <b>William Vazquez</b>	COURT CASE NUMBER <b>07C6679</b>
DEFENDANT <b>Village of Bensenville, et al.</b>	TYPE OF PROCESS <b>S/C</b>

<b>SERVE</b> ➡  <b>AT</b>	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN <b>Deage County</b>
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) <b>421 North County Farm Road, Wheaton, IL 60187</b>

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

**William Vazquez**  
**100 North Mason Street, #302**  
**Bensenville, IL 60106**

Number of process to be served with this Form - 285

Number of parties to be served in this case

Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

Fold

Fold

**FILED**JAN 28 2008 *JK* JAN 28 2008MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Signature of Attorney or other Originator requesting service on behalf of:

☒ PLAINTIFF  
☐ DEFENDANT

TELEPHONE NUMBER

DATE

12-20-07

**SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE**

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process <b>2 of 2</b>	District of Origin No. <b>24</b>	District to Serve No. <b>24</b>	Signature of Authorized USMS Deputy or Clerk  <b>TD</b>	Date <b>12-20-07</b>
---	--------------------------------	-------------------------------------	------------------------------------	---	-------------------------

I hereby certify and return that I ☒ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

**PAUL HINDS, CHIEF CLERK**☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.

Address (complete only if different than shown above)

Date of Service

**1/24/08**

Time

**3:30 PM**

Signature of U.S. Marshal or Deputy

Service Fee <b>96.00</b>	Total Mileage Charges (including endeavors) <b>29.10</b>	Forwarding Fee <b>0</b>	Total Charges <b>125.10</b>	Advance Deposits <b>125.10</b>	Amount owed to U.S. Marshal or <b>125.10</b>	Amount of Refund <b>0</b>
-----------------------------	---	----------------------------	--------------------------------	-----------------------------------	---	------------------------------

REMARKS:

**1 DUSM**  
**2 HOURS**  
**60 miles RT**

PRIOR EDITIONS  
MAY BE USED

1. CLERK OF THE COURT

FORM USM-285 (Rev. 12/15/86)



CASREF, KEYS

**United States District Court  
Northern District of Illinois - CM/ECF LIVE, Ver 3.0 (Chicago)  
CIVIL DOCKET FOR CASE #: 1:07-cv-06679**

Vazquez v. Village of Bensenville et al  
Assigned to: Honorable Ruben Castillo  
Referred to: Honorable Arlander Keys (Settlement)  
Demand: \$750,000  
Cause: 42:1983 Civil Rights Act

Date Filed: 12/14/2007  
Jury Demand: Plaintiff  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

**Plaintiff**

**William Vazquez**

represented by **William Vazquez**  
100 North Mason Street  
#302  
Bensenville, IL 60106  
630-319-4181  
PRO SE

V.

**Defendant**

**Village of Bensenville**

represented by **Phillip Anthony Luetkehans**  
Schrott & Luetkehans, P.C.  
105 East Irving Park Road  
Itasca, IL 60143  
(708) 773-8500  
Email: pluetkeh@sl-atty.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Brian J. Armstrong**  
Schrott & Luetkehans, P.C.  
105 East Irving Park Road  
Itasca, IL 60143  
(708) 773-8500  
Email: barmstro@sl-atty.com  
*ATTORNEY TO BE NOTICED*

**Robert William Funk, II**  
Schrott & Luetkehans, P.C.  
105 East Irving Park Road  
Itasca, IL 60143  
(708) 773-8500  
Email: rfunk@sl-atty.com  
*ATTORNEY TO BE NOTICED*

**Defendant**

**County of DuPage**



Date Filed	#	Docket Text
11/28/2007	<u>1</u>	RECEIVED Complaint and 2 copies by William Vazquez. (gmr, ) (Entered: 11/29/2007)
11/28/2007	<u>2</u>	CIVIL Cover Sheet. (gmr, ) (Entered: 11/29/2007)
11/28/2007	<u>3</u>	PRO SE Appearance by Plaintiff William Vazquez. (gmr, ) (Entered: 11/29/2007)
11/28/2007	<u>4</u>	APPLICATION by Plaintiff William Vazquez for leave to proceed in forma pauperis. (gmr, ) (Entered: 11/29/2007)
12/14/2007	<u>5</u>	MINUTE entry before Judge Ruben Castillo : After careful review, plaintiffs application to proceed in forma pauperis <u>4</u> is granted. Plaintiff should proceed with service on the named defendants. If plaintiff can not retain counsel, he should file a motion for this Court to consider appointing counsel. The Court will hold a status hearing in open court on 2/7/2008 at 9:15 a.m. Mailed notice (mb, ) (Entered: 12/17/2007)
12/14/2007	<u>6</u>	COMPLAINT filed by William Vazquez; (mb, ) (Entered: 12/17/2007)
12/19/2007		SUMMONS Issued: two original and two copies; two copies of the complaint; two certified copies of the minute order dated 12/14/07 to the U.S. Marshal's service as to Defendants Village of Bensenville, County of DuPage (mb, ) (Entered: 12/19/2007)
01/08/2008	<u>7</u>	PROCESS RECEIPT for summons Returned Executed by the U.S. Marshal as to Village of Bensenville on 12/31/2007, answer due 1/22/2008. (tlm) (Entered: 01/11/2008)
01/21/2008	<u>8</u>	Appearance by Village of Bensenville (Luetkehans, Phillip) (Entered: 01/21/2008)
01/21/2008	<u>9</u>	Appearance by Village of Bensenville (Funk, Robert) (Entered: 01/21/2008)
01/21/2008	<u>10</u>	Appearance by Village of Bensenville (Armstrong, Brian) (Entered: 01/21/2008)
01/21/2008	<u>11</u>	MOTION by Defendant Village of Bensenville for extension of time to file answer <i>or otherwise plead</i> (Luetkehans, Phillip) (Entered: 01/21/2008)
01/21/2008	<u>12</u>	NOTICE of Motion by Phillip Anthony Luetkehans for presentment of motion for extension of time to file answer <u>11</u> before Honorable Ruben Castillo on 1/29/2008 at 09:45 AM. (Luetkehans, Phillip) (Entered: 01/21/2008)
01/28/2008	<u>16</u>	SUMMONS Returned Executed by U.S. Marshals Service as to County of DuPage on 1/24/2008, answer due 2/13/2008. (rp, ) (Entered: 02/01/2008)
01/29/2008	<u>13</u>	MINUTE entry before Judge Ruben Castillo :The status hearing set for 2/7/2008 will begin at 9:00 a.m. Motion hearing held on 1/29/2008. Plaintiff's oral motion for default is granted. The Court hereby enters a default against defendants Village of Bensenville and County of DuPage for failure to timely appear, answer or otherwise plead. Defendant



		Village of Bensenville's motion for extension of time to answer <u>11</u> is denied for failure to appear. Mailed notice (rao, ) (Entered: 01/29/2008)
01/30/2008	<u>17</u>	SUM CERTAIN by William Vazquez ; Notice. (rp, ) (Entered: 02/01/2008)
01/31/2008	<u>14</u>	MOTION by Defendant Village of Bensenville to set aside default (Luetkehans, Phillip) (Entered: 01/31/2008)
01/31/2008	<u>15</u>	NOTICE of Motion by Phillip Anthony Luetkehans for presentment of motion to set aside default <u>14</u> before Honorable Ruben Castillo on 2/7/2008 at 09:00 AM. (Luetkehans, Phillip) (Entered: 01/31/2008)
02/07/2008	<u>18</u>	MINUTE entry before Judge Ruben Castillo :Status hearing held on 2/7/2008 and continued to 4/8/2008 at 9:00 a.m. Defendants' motion to set aside default <u>14</u> and Plaintiff's pro se motion for sum certain <u>17</u> are entered and continued to 4/8/2008 at 9:00 a.m. Mailed notice (rao, ) (Entered: 02/07/2008)
02/07/2008	<u>19</u>	Pursuant to Local Rule 72.1, this case is hereby referred to the calendar of Magistrate Judge Arlander Keys for the purpose of holding proceedings related to: settlement conference.(rao, )Mailed notice. (Entered: 02/07/2008)

PACER Service Center			
Transaction Receipt			
02/08/2008 15:43:08			
PACER Login:	dc0180	Client Code:	
Description:	Docket Report	Search Criteria:	1:07-cv-06679
Billable Pages:	2	Cost:	0.16



①

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**FILED**

JAN 30 2008 NF

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

William Vázquez,  
Plaintiff,

No. 07 CV 6679

JAN 30 2008

v.

Judge Castillo

Village of Bensenville,  
County of DuPage,

Mag. Judge Keys

Defendants.

Jury Demand

To:

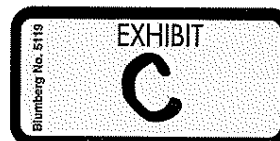
Phillip A. Luetkehans, Attorney for  
The Village of Bensenville  
105 East Irving Park Road  
Itasca, Illinois 60143

**NOTICE OF FILING**

You are hereby notified that on the \_\_\_\_30th\_\_\_\_ of January, 2008 The  
following documents were filed with the Clerk of the Court:

Sum Certain

With which you may see fit to do.



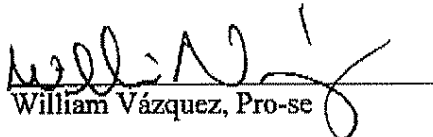
State of Illinois                    }  
  }  
County of DuPage                }

SS

**PROOF OF SERVICE**

I, William Vázquez, Pro-se, on oath state that I served a copy of the foregoing NOTICE, by mail a copy, with all postage paid / I served this notice by delivering a copy, to each person to whom it is directed, this

30 th day of January, 2008.

  
William Vázquez, Pro-se

William Vázquez, Pro-se  
100 North Mason Street, #302  
Bensenville, Illinois  
60106  
630.319.4181  
wilv@sbcglobal.net

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

William Vázquez,  
Plaintiff,

v.

Village of Bensenville,  
County of DuPage,

Defendants.

No. 07 CV 6679

Judge Castillo

Mag. Judge Keys

Jury Demand

*ORIGINAL*

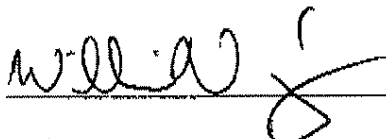
**FILED**  
JAN 30 2008 NF  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT  
JAN 30 2008

SUM CERTAIN

NOW COMES, William Vázquez, Pro-se, first being duly sworn, on oath deposes and states as follows:

- 1.) No answer has been received by the Plaintiff with-in the time fixed by the Federal Rule of Civil Procedures, Rule 12(a);
- 2.) Defendant, Village of Bensenville, motion this case up on 29 January, 2008 with a Motion To Enlargement of Time, then failed to appear for that hearing;
- 3.) Defendant is a government body which is neither an infant nor incompetent person;
- 4.) Defendant is not in the military service;
- 5.) I have reviewed the attached affidavit and find it true and correct.

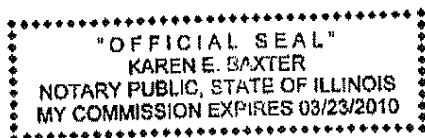
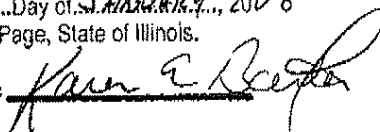
I hereby do state that this statement is truthful. I would be willing to testify to said facts in a court of law.



William Vázquez, Pro-se  
100 North Mason Street, #302  
Bensenville, Illinois  
60106  
630.319.4181  
wilv@sbcglobal.net

Subscribed and sworn to before me  
this 3<sup>rd</sup> Day of JANUARY, 2008  
County of DuPage, State of Illinois.

Notary Public



DESCRIPTION	AMOUNT
Loss of Income	16,000
Bail	3,000
Legal expenses	3,000
Lost vacation days 16 @ \$220 per day	3,520
<b>TOTAL</b>	<b>\$25,520</b>